

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JAMES VASSELL,

Petitioner,

v.

**CIVIL ACTION NO. 2:95-CV-11
CRIMINAL ACTION NO. 3:89-CR-190
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Order dated April 10, 2008 [Doc. 151], this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on May 2, 2008 [Doc. 156]. In that filing, the magistrate judge recommended that this Court deny the motions to reduce sentence as well as the motion seeking relief from the defendant's fine and his motion for return of seized property.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten (10) days of its receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on May 5, 2008. See Doc. 161. The petitioner timely filed his objections on May 14, 2008. See Doc. 162. Accordingly, this Court will review those portions to which the petitioner filed objections *de novo*. The remainder of the report and recommendations will be reviewed for clear error.

As an initial matter, in his objections to the R & R the petitioner states that he waives all claims based on Amendment 505, i.e. Docs. 141 and 144. Accordingly, those motions will be denied.

The petitioner's first objection concerns his motion for sentence reduction. In his motion, the petitioner seeks a reduction in his sentence pursuant to Amendment 9. In the magistrate judge's R & R, the magistrate judge recommended that the motion be denied because Amendment 9 is not authorized by 18 U.S.C. § 3582(c)(2). In his objections the petitioner claims that his motion is essentially an Amendment 706 motion. To the extent that the petitioner may conceivably have his sentence reduced based upon a 706 motion, this court will deny the motion under Amendment 9 without prejudice. The Court will address the viability of such a claim in accordance with the United States District Court for the Northern District of West Virginia's plan concerning such motions. That plan consists of independently reviewing each defendant's case file to determine whether a reduction in sentence is warranted. Therefore, the Court will review the motion to reduce sentence under Amendment 706 at a future date in compliance with this plan.

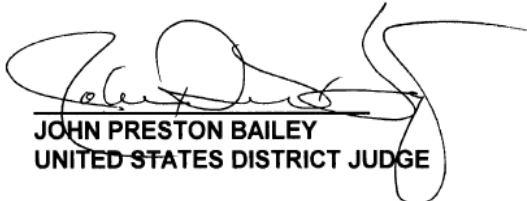
The petitioner's third objection relates to the claims seeking relief from the Judgment Order Imposing Fine and Motion for Return of Seized Property. In support of his motion, the petitioner makes a bald assertion that the magistrate judge's R & R is "clearly erroneous and contrary to law." This Court has reviewed the R & R and finds no such error. Accordingly, the Court will overrule the objection.

Upon careful review of the report and recommendation, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation [Doc. 156]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Additionally, the petitioner's Objections **[Doc. 162]** are hereby **OVERRULED**. Therefore, this Court hereby **DENIES** the Defendant's Motions for Sentence Reduction **[Doc. Nos. 141, 144]** and Defendant's Motion Seeking Relief from Judgment or Order Imposing Fine and Motion for Return of Seized Property **[Doc. Nos. 142, 149]**. The Court **DENIES without prejudice** Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2) **[Doc.148]**,

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: June 2, 2008.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE